IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 191 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

RAM SHASTRI

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner No. 1-2

MR BY MANKAD, APP for Respondent No. 1

Respondent No. 2 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 04/09/2001

ORAL JUDGEMENT

1. This Revision Application is directed against an order passed by learned Assistant Sessions Judge, Rajkot, on 19.2.2001, below Application of the present petitioners - Exh.12, filed for dismissal of the

complaint on the ground that the Court concerned would not take the cognizance of the alleged offences under Sections 132 and 197 of the Criminal Procedure Code, for want of required sanction.

2. The facts of the case go to suggest that the incident in question occurred on 11.01.1993 at city of Rajkot. The State of Gujarat was disturbed by communal riots everywhere. In Rajkot also at about 1700 hours, near Dena Bank Chowk, a mob was gathered and a programme of burning effigy of leaders was arranged. However, to maintain the law and order, Police made strict bandobast. There was a Notification under Sec. 144 of the Criminal Procedure Code for the gathering of persons of more than 5 in number. When this mob, at the relevant time, gathered in the Dena Bank Chowk, the Superintendent of Police Mr.Ram Shastri, petitioner No.1 herein, announced on a loud speaker that mob should disperse. The mob did not disperse. On the contrary, the mob attacked the Police and attempted to restrain the Police from discharging their duties to maintain the law and order. There was also stone throwing from the mob against the Police. The mob entered into Nagarik Bank and from their the mob started stone throwing against the Police. There was damage to the traffic signal and traffic point also. Tear gas and lathi charge were also used. Even then, there was stone throwing on the Police by the mob from the Nagarik Bank premises. DSP concerned was also arrived at the spot. He ordered the Police force to enter into the premises of the Nagarik Bank and arrest the persons of the mob throwing stones from the premises. Police entered in the Nagarik Bank and arrested some person. In this process, present petitioner No.1 and other two Police Personnel were injured. The FIR came to be lodged regarding this incident against 87 persons before Pradumannagar Police Station vide Crime Register No. 18/93 on the same day by one Police Inspector Mr. C.P. Dalal, under Sections 141, 148, 149, 337, 338, 353, 186, 188, 332, 333 of the Indian Penal Code and under Sections 37(1) and 135 of the Bombay Police Act.

3. On 13th of January, 1993, one Mulji Khimji Ger, accused in above said Crime Register, filed a private complaint before learned Sessions Judge, Rajkot, under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 323, 504 and 506 of the Indian Penal Code. In para-1 of the complaint, it was alleged that the present

petitioners entered into the Nagarik Bank, when the complainant - respondent No.2 herein, was doing his cleaning work because he was employed as a Sweeper in Nagarik Bank. Entering in the premises, the present petitioners insulted the complainant in filthy language which constitutes offence under Section 3(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, as per the allegation of the complainant, he was beaten by the present petitioners by sticks and he was injured and got treatment in Govt. Hospital, and hence, the complaint for offences punishable under Section 3(1) of the Atrocities Act and for the offences punishable under Sections 323, 504 and 506 of the IPC was preferred. After verification of the complaint, learned Special Judge vide his order dated 5th May, 1993 issued summons against the present petitioners for the above said offences. Appearing in response to the above said summons of the Special Judge in the said private complaint, which was numbered as Spl. Case No. 249 of 1993, the present petitioners vide Exh.12 gave an application that as the act complained of is falling within the discharge of their duty as public servant, the complaint is required to be dismissed for want of sanctions under Sections 132 and 197 of the Cr.P.C. A copy of the FIR in Crime Register No.18 of 1993 recorded before the Premnagar Police Station was also produced, wherein the complainant Mulji Khimji Ger was an accused at Sl. No. 86. The learned Spl. Judge passed order that "to be heard along with final hearing of the case" below Application Exh.12 of the present petitioners. Therefore, the present petitioners filed an Application before this Court, being Criminal Misc. Application No. 5162 of 1993 for quashing of the complaint filed by the complainant and quashing of the process issued in Special Case No. 249 of 1993. Vide order dated 22nd of September, 2000, this Court observed that the order passed by the learned Sessions Judge i.e. Special Judge, below Exh. 12 to be heard along with the final hearing of the criminal case, was not just and proper as the point raised vide Application Exh.12 was the point which might have decided the fate of the case. This Court, therefore, directed the learned Sessions Judge, Rajkot, to decide Application - Exh.12 preferred by the present petitioners in the above said Spl. Case No. 249 of 1993 on merits after giving proper opportunity to the parties. Thereafter it appears that the learned Sessions Judge heard the parties in respect of Exh.12 Application filed by the present petitioners and learned Asst. Sessions Judge, Rajkot, vide his order dated 19.2.2001, rejected the application of the petitioners filed at Exh.12.

Being aggrieved and dissatisfied, this Revision Application is preferred by the accused in the above said Spl. Case.

4. Learned Advocate M.J.Buddhbatti for the petitioners and learned APP Mr.B.Y.Mankad for respondent No.1 State of Gujarat were heard. While rule is served on respondent No.2 - Mulji Khimji Ger original complainant.

5. Learned Advocate for the petitioners revisionists raised two fold contentions. Firstly, this Spl. Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, has no authority either under the Act or under the Code of Criminal Procedure to take the cognizance of the offence. Therefore, the learned Sessions Judge has committed illegality in issuing summons in the first place. Second contention which is raised is regarding the merits of the case. It was vehemently urged that the order impugned of the Assistant Sessions Judge, Rajkot, was erroneous because the act complained of was in the discharge of the duty of the petitioners as public servant, and without the sanction under Sections 132 and 197 of the Code of Criminal Procedure, the Special Judge ought not to have taken cognizance of the offence alleged.

6. From the above contentions, this Court will have to examine first contention first because, only if the Spl. Judge is empowered to take cognizance for the Offences committed under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, then the question of deciding Application Exh.12 by the Special Judge would arise. The issue in question is directly covered by a decision of the Supreme Court, as cited by learned Advocate Mr. Buddhbatti for the petitioners. The Supreme Court in the matter of GANGULA ASHOK vs. STATE OF A.P., reported in 2000 (1) Supreme (CR) 132, decided that Special Court under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, cannot take cognizance of any offence directly, without case being committed to that Court, a complaint or charge sheet cannot straightway be laid before Special Court. The Supreme Court further ruled that Court of Session cannot take cognizance of any offence directly, without case being committed to it by a Magistrate. In paras 13, 14, 15 and 16, the Supreme Court observed as under :

"13. A reading of the sub-section makes it clear that subject to the provisions in other enactments all offences under other laws shall

also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code. This means that if other enactment contains any provision which is contrary to the provisions of the Code, such other functions would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the code would apply to the matters covered thereby. This aspect has been emphasised by a Constitution Bench of this Court in paragraph 16 of the decision in A.R. Antulay v. Ramdas Sriniwas Nayak and Anr., 1984 (2) SCC, 500.It reads thus :

" Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations."

"14. Nor can Section 5 of the Code be brought in aid for supporting the view that the Court of Session specified under the Act can obviate the interdict contained in Section 193 of the Code as long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a Court of original jurisdiction. Section 5 of the Code reads thus :

"5. Saving. - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being

in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

"15.This Court, on a reading of Section 5 in juxtaposition with Section 4(2) of the Code, has held that "it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent, in the absence of any contrary provision in the special Act or any special provision including the jurisdiction or applicability of the Code."

"16. Hence, we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge sheet cannot straightway be laid before the Special Court under the Act."

7. In view of the above, filing a complaint directly before the Sessions Judge i.e. Special Judge, is an illegality. Holding inquiry in pursuance of that complaint is also an illegality. Issuance of summons to the accused and taking cognizance of the offences complained of, is also an illegality committed by the Court of Sessions, Rajkot. There is no provision, as stated above by the Supreme Court in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by which, the Court of Sessions i.e. Special Court can take cognizance directly of the offence complained of without the case being committed. Therefore, though the petitioners are before this Court for the revision or modification of the order impugned passed by the learned Asst. Sessions Judge, Rajkot, below Exh. 12, but at the same time raises this important contention also. In this view of the matter, it will have to be held that treating the private complaint under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and taking cognizance of the same, is an illegality committed by the Special Court, Rajkot, being Sessions Court, and therefore, the orders passed by the learned Asst. Sessions Judge, Rajkot, for holding inquiry in pursuance of private complaint i.e. Special Case No. 60 of 1993 would be a nullity and taking cognizance of a private

complaint under the Prevention of Atrocities Act also, and issuing summons to the accused would be the orders which are nullity and has no effect at all in view of the law laid down by the Apex Court in the above cited decision.

8. In view of the aforesaid discussion, this Revision Application is allowed. The order of the learned Assistant Sessions Judge, Rajkot, below private complaint of respondent No.2, which is registered as Spl. Case No. 249 of 1993, passed on 13.01.1993 to hold inquiry under Section 202 of the IPC is quashed. The order of the learned Asst. Sessions Judge, below the private complaint on 5th May, 1993, issuing of summons against the petitioners for the above said offences is also nullity and quashed. In the same manner the order passed below Application Exh.12 by learned Assistant Sessions Judge on 19.2.2001 which is impugned in this Revision is also quashed and set aside. Learned Sessions Judge, Rajkot, is further directed to transmit the complaint filed by the present respondent No.2 - Mulji Khimji Ger to the concerned Magistrate, who is empowered to take the cognizance of the offence, and so transmitting the complaint to the concerned Magistrate, such Magistrate shall proceed with the complaint in accordance with the law. The present petitioners will have a right and liberty to file proper applications and make submissions before such Magistrate as regards to the sanction under Sections 132 and 197 of the Code of Criminal Procedure at appropriate stage of the proceedings, and if, such submissions are made, such Magistrate shall decide the same on merits. Rule is made absolute to the aforesaid extent.

(J.R. Vora, J.)

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